



Order 98-2-18

Served: February 26, 1998

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 20th day of February, 1998

Applications of

ANTONOV DESIGN BUREAU

for exemptions under 49 U.S.C. section 40109(g)

Dockets	OST-97-	OST-97-3260
2921		
	OST-97-	OST-97-3284
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ORDER CONFIRMING EXEMPTIONS

Summary

This order confirms our oral actions granting Antonov Design Bureau (Antonov) exemption authority to operate cargo charter flights carrying emergency cabotage traffic consisting of outsized aircraft engines and parts and related equipment.¹

Applications

¹ Antonov is a Ukrainian foreign air carrier which holds exemption authority to operate all-cargo charter service between the Ukraine and the United States, and other charters pursuant to 14 CFR 212 of the Department's regulations (Order 93-5-37).

By applications filed during the period September 22, 1997 - January 7, 1998, as shown in the attached Notices of Action Taken, Antonov requested exemption authority pursuant to 49 U.S.C. section 40109(g) to permit it to operate cargo charter flights on behalf of the Boeing Commercial Airline Group, General Electric Aircraft Engines (GEAE), and Pratt & Whitney (P&W), using its AN-124 aircraft, to transport outsized GE90 and P&W engines, aircraft parts and related components in support of Boeing's 777 and other commercial aircraft programs. In support of its applications, Antonov stated that immediate delivery was urgently required in order to compensate for severe material shortages and unanticipated production delays, and to meet testing schedules and various shipment deadlines imposed by aircraft customers.

Antonov also stated that the overall GE90 delivery schedule had been further disrupted because GEAE had to allocate several engines from its production line in direct support of the airlines that operate B-777 aircraft, and that several previously-delivered engines had to be removed from production and returned to the test cycle for further evaluation and inspection. The carrier stated that timely delivery of a new generation P&W engine as soon as it was completed and ready for shipment was critical in order to meet installation, testing and certification schedules. Antonov further stated that delivery by air was imperative in order to prevent further delays in production and delivery schedules and undue hardship to Boeing and its aircraft programs, and that because of the size of the cargo transportation on U.S.-carrier aircraft was not possible.

Answers

Antonov served its applications on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority.

Statutory Standards

Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, is not relevant here).²

Disposition

We orally granted Antonov's requests for exemption authority to conduct its proposed emergency cabotage flights. We confirm our actions here. We found that each application met all of the relevant criteria of 49 U.S.C. section 40109(g) for the grant of an exemption of this type, and that grant of this authority was required in the public interest.

We were persuaded that the unforeseen material shortages and production delays; the need to move the cargo promptly to support production, testing, and aircraft delivery deadlines; and the fact that the cargo could not be transported by surface to meet these deadlines, constituted an emergency created by unusual circumstances not arising in the normal course of business. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of Antonov's requests would prevent unreasonable hardship to Boeing.

² For examples of earlier grants of authority of this type, *see* Orders 97-10-12 and 97-9-28.

In view of the above, we found that immediate action on these applications was required; that our actions met the relevant criteria of 49 U.S.C. 40109(g) and were required in the public interest; and that our actions did not constitute major regulatory actions under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken which granted Antonov Design Bureau exemption authority pursuant to 49 U.S.C. section 40109(g) to perform the operations described in those Notices;
3. In the conduct of the authorized operations, we required Antonov to comply with the conditions of Attachment A, FAA-approved flight routings, and any requisite Department of Defense procedures; and
4. We will serve this order on Antonov Design Bureau, the Ambassador of the Ukraine in Washington, D.C., the Department of State (Office of Aviation), and the Federal Aviation Administration (AFS-200).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-97-2921

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: September 22 & 25, 1997

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wichita/McConnell AFB, KN, and Seattle/Boeing Field, WA, on or about September 25, 1997, using AN-124 aircraft, to transport thrust reverser halves and related equipment for Boeing 777 aircraft, and specified aircraft parts for other Boeing commercial airplane programs, on behalf of the Boeing Commercial Airline Group.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 25, 1997**

Effective dates of authority granted: **SEPTEMBER 25 - 28, 1997**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☒ Standard exemption conditions
- ☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight, and obtain any requisite Department of Defense authorizations.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

Docket OST-97-2922

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: September 22, 1997

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wilmington, OH, and Seattle/Boeing Field, WA, on or about September 26, 1997, using AN-124 aircraft, carrying one outsized GE90 engine and related equipment for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel (202) 663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **SEPTEMBER 25, 1997**

Effective dates of authority granted: **SEPTEMBER 26 - 29, 1997**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☒ Standard exemption conditions
- ☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



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NOTICE OF ACTION TAKEN

Docket OST-97-2971

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: October 3, 1997

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate three one-way emergency cabotage cargo charter flights between Wilmington, OH, and Seattle/Boeing Field, WA, during the period October 7-November 5, 1997, using AN-124 aircraft, carrying three outsized GE90 engines and related equipment for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **OCTOBER 7, 1997**

Effective dates of authority granted: **OCTOBER 7 - NOVEMBER 5, 1997**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

- ☒ Standard exemption conditions
- ☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-97-3143

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: November 20, 1997

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate: (1) one one-way emergency cabotage cargo charter flight between Seattle/Boeing Field, WA, and Wilmington, OH; and (2) two one-way emergency cabotage cargo charter flights between Wilmington and Seattle/Boeing Field; during the period November 21-December 8, 1997, using AN-124 aircraft, carrying a total of six outsized GE90 engines and related equipment for installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **NOVEMBER 21, 1997**

Effective dates of authority granted: **NOVEMBER 21 - DECEMBER 8, 1997**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions

☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-97-3260

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: December 17, 1997, as amended

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate two one-way emergency cabotage cargo charter flights: (1) Wilmington-Windsor Locks-Seattle; and (2) Wilmington-Seattle; during the period December 19-29, 1997, using AN-124 aircraft, carrying a total of five outsized GE90 engines and two outsized Pratt & Whitney engines plus ancillary equipment for testing, certification and installation on Boeing 777 aircraft, on behalf of General Electric Aircraft Engines and Pratt & Whitney.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **DECEMBER 18, 1997**

Effective dates of authority granted: **DECEMBER 19- 29, 1997**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions

☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
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NOTICE OF ACTION TAKEN

Docket OST-97-3284

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: December 23, 1997

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo charter flight between Wilmington, OH, and Seattle/Boeing Field, WA, on or about December 29, 1997, using AN-124 aircraft, carrying three outsized GE90 engines plus ancillary equipment for installation on Boeing's 777-300 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **DECEMBER 24, 1997**

Effective dates of authority granted: **DECEMBER 29, 1997 - JANUARY 2, 1998**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions

☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs



**U.S. Department of
Transportation**
Office of the Secretary
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NOTICE OF ACTION TAKEN

Docket OST-98-3318

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Antonov Design Bureau**

Date Filed: January 7, 1998

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate four one-way emergency cabotage cargo charter flights between Wilmington, OH, and Seattle/Boeing Field, WA, during the period January 10-February 9, 1998, using AN-124 aircraft, carrying up to four outsized GE90 engines plus ancillary equipment for installation on Boeing's 777 aircraft, on behalf of General Electric Aircraft Engines.

Applicant representative: Sheryl R. Israel 202-663-8312

Responsive pleadings: Antonov served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operations, and that it had no comment or did not oppose grant of the requested authority to Antonov.

DISPOSITION

Action: **APPROVED**

Action date: **JANUARY 9, 1998**

Effective dates of authority granted: **JANUARY 10 - FEBRUARY 9, 1998**

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operations at issue here. We also found that grant of this authority would prevent unreasonable hardship to Boeing.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

☒ Standard exemption conditions

☐ Foreign air carrier permit conditions

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs